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Current Topics.

The Lord Chancellorship.

TO EVERY member of the legal profession, as to many beyond its bounds, the announcement that Viscount CAVE felt himself compelled by continued ill-health to tender his resignation of the Great Seal, came, although the news was not altogether unexpected, as a shock and as a subject of personal loss. For everyone admired Lord CAVE as a man, as a broad-minded statesman eminently fitted to hold office in troublous days, and as a sound judge. At the Bar his advocacy was invariably marked by a quietness of presentment which on that account, as well as on the lucidity of his style, found a ready reception from those he set out to convince. It seems not so very many years since, as a busy junior, he yet found time to edit two editions of the classic work on "Easements," by GALE, little dreaming then that a turn of the wheel would bring him in the fulness of time to the Woolsack. No promotion was better deserved. Probably enough, there have been greater masters and expositors of the law than he, but few have equalled him in soundness of judgment, and in clear good sense, and these, after all, are the qualities we most desire in our judges.

Turning now to his successor, we are, we feel sure, only expressing the unanimous mind of the profession when we say that Sir DOUGLAS HOGG, who has been a model Attorney-General, will receive the sincerest congratulations on his well-merited promotion. In the past we have instances innumerable of great judges who turned out indifferent judges. No such declaration is likely to follow in the present case. Sir DOUGLAS has been a forceful advocate, putting his whole strength into his work, thus showing that he believed in his case, and, undoubtedly he has been the most effective law officer for some years. It has been whispered that the Government would fain have retained his services in the House of Commons, where his persuasive powers gave him a commanding position on the Treasury Bench, and proved a tower of strength to the Ministry, but to him, as to most lawyers it would be, the Woolsack appeared to be the true goal of his ambition—a position he has reached by sound work in Parliament and in the courts. To his new and high office he will carry the good wishes of every member of both branches of the profession.

We learn with much regret just as we are going to press that Lord CAVE has just passed away.

The New Law Officers.

THE PROMOTION of Sir DOUGLAS HOGG has been followed by that of Sir THOMAS INSKIP to the office of Attorney-General. It can scarcely be said by even his warmest admirers that Sir THOMAS has been in the very front rank of the Bar, or that his powers of advocacy or argument were on a level with those of Sir DOUGLAS HOGG. He has no doubt, attained a certain success in the House of Commons, and he certainly has the courage of his convictions, particularly on ecclesiastical questions, but his work in court has lacked distinction. Whether more animation and force will be developed with the larger responsibilities that will now devolve upon him, remains to be seen. After all, it must be remembered that dramatic successes are not the chief thing, and it may well be that the new Attorney-General will prove stronger than some are disposed to conjecture. His successor in the office of Solicitor-General is Mr. F. B. MERRIMAN, K.C., who, since he took silk in 1919, has come rapidly to the front as one of the most effective leaders—clear and convincing. He has been Recorder of Wigan since 1920, and a member of the House of Commons since 1924. In him, we venture to prophesy, the Government will find a skilful and effective advocate both in the House and in the courts.

The Law and Art.

LAWYERS WERE in force at the annual dinner of the Old Water-Colour Society's Club on Monday evening, Lord BLANESBURGH, the president of the club, being in the chair, and Viscount SUMNER proposing the toast of "The Royal Society of Painters in Water Colours." To Viscount SUMNER may well be applied the words of Dr. JOHNSON in reference to GOLDSMITH: "He touches nothing which he does not adorn." A judge who can invest with interest even the exposition of a charter-party—a document usually deemed to be the dullest of the dull—was at no loss in finding something characteristic to say about pictures and their collection, declaring, for example, that we ought to cease to buy the old masters and devote ourselves to making more modern collections—a dictum which, no doubt, commended itself to the hearty sympathy of the artists present. But the taking part in such festive functions has not been the only link between law and the arts. The legal profession has at all times had some art devotees. Sir ROBERT COLLIER (afterwards Lord MONKSWELL) when Solicitor-General was a frequent exhibitor at the Royal Academy, and found a solace in his art studies from the worries of a busy practice. Sir FRANCIS NEWBOLT, the Official Referee, is another who has found pleasure in art, particularly in etching, and, in lighter vein, he who conceals his identity under the letter O has added to the gaiety of legal literature by the humorous sallies of his pencil.

Poor Prisoners' Defence.

A GREAT DEAL has been said and written of late upon the subject of poor litigants. It is generally admitted that the Poor Prisoners' Defence Act, 1903, works none too well; and it is often urged that there is a necessity for the provision of legal aid to defendants in the police court. Anything like a general right of free defence is without doubt impracticable, but there are many cases—and such cases tend to increase—in which magisterial courts have wide powers of trial and sentence in matters of gravity and difficulty, in which it is, to say the least, sometimes unfortunate that the defendant should not be represented. One aspect of the question that receives rather less attention than it deserves is the inability of many unlettered defendants to appreciate the real elements of a criminal offence wherewith they are charged. The Legislature long ago thought it necessary for a court of summary jurisdiction to explain, in certain circumstances, the meaning of "false pretences," though at times the explanation may be given in such a way as merely to darken counsel and leave the defendant hopelessly bewildered. More recently it has enjoined courts to explain a charge on committal in ordinary language, and to employ ordinary language in issuing process. If this excellent principle be carried out thoroughly in all the proceedings of the court, whether actually required by statute or not, there would be little danger that anyone would be convicted upon a plea of guilty under a misapprehension as to the nature of the offence. Otherwise, we suggest, there really is such danger. Ignorant men are apt to imagine that they may be convicted of stealing or embezzlement, or similar offences, when their intentions were not dishonest. An employee who is short in his takings, and quite unable to explain the deficiency, and who may indeed have mixed his master's money with his own through sheer muddle and incapacity, may imagine that his conduct, though never intentionally dishonest, is evidently so reprehensible that the law will punish him for embezzlement. Experience in criminal courts and practice shows that this kind of misunderstanding does exist, and may easily lead to a plea of guilty on the part of an innocent man. Legal aid to explain quietly beforehand what the nature of the charge is, what are its essential ingredients, and what the plea ought to be, may be no less necessary than to help a defendant strenuously to contest the facts of a case or to prove an alibi.

Altering Sentences.

THE RECORDER OF LONDON last week reduced, from five years to four years, a sentence of penal servitude which he had passed the day before on a bigamist. Addressing the prisoner, he said that he had given further consideration to the sentence, and, while thoroughly retaining his view as to the heinousness of the prisoner's offence, he always endeavoured to err on the side of mercy, if possible. No one would accuse Sir ERNEST WILD of vacillation or weakness, and the incident is, in our view, wholly satisfactory, even if, as is possible, the original sentence was as appropriate as the revised term. It shows, firstly, that the learned Recorder gave continued thought to the case, and did not dismiss it lightly from his mind even after its conclusion; and, secondly, that he has the courage to alter his decision when he feels it right to do. Only the most superficial view would attribute a change of sentence to weak indecision; it takes a strong man to own to a change of opinion and to put it into effect, and those who have the responsibility of passing sentence and giving other judicial decisions are more likely to need to remind themselves that it is sometimes right to revise a decision than to strengthen themselves in a determination not to be influenced to make an occasional alteration. If, upon new considerations being presented, the court declines while it still has the power to make the least change, and merely refers the defendant to his right of appeal, if any, there may be in effect a refusal of any chance of re-consideration. Admittedly, altered sentences, and indeed most altered decisions of any kind, are in favour of the defendant. Very few judges or magistrates would think it fitting to increase the length of a sentence or the severity of the terms of an order, even if new considerations convinced them that it would be just to do so. The natural feeling is that the defendant is entitled to assume that once he knows his fate he knows the worst. Even courts of appeal, though they are moved by the defendant, rarely increase a sentence, and then only when the appeal is persisted in after warning has been given of the possible consequences of what may in some instances be little short of impudence.

Intention in Libel.

SINCE THE decision of the House of Lords in the leading case of *Hulton & Co.* v. *Jones*, 1910, A.C. 20, journalists and novelists in attributing adventures even to a purely fictitious person, have often been haunted by the fear that some individual bearing the name given to the hero or heroine of the fictitious narrative might start up and allege that he or she has been defamed by the statements which have been published. The fear has not always been unfounded, as is proved, for example, by the action tried recently in the Scottish Court of Session, of *M'Nulty* v. *D. C. Thomson & Co., Ltd.* In one of the journals published by the defendants there appeared a highly sensational account of the adventures of a young woman named ELIZABETH M'NULTY. The plaintiff, who bore the same name, claimed damages from the defendants on the ground that, although the narrative could not be true as regards her, many of her friends thought that it did apply to her. The action was tried with a jury, who found a unanimous verdict for the defendants—a verdict which we take as expressing the view of the jury that they were not satisfied that the plaintiff's witnesses had reasonable ground for thinking that the article in the newspaper could apply to her. It will be remembered that in *Hulton & Co.* v. *Jones, supra*, the House of Lords laid it down that it is no defence to an action for libel for the defendant to show that he did not intend to defame the plaintiff if reasonable people would think the language to be defamatory of him. In every case of this nature it must therefore be shown that reasonable people would think that the alleged defamatory statement had reference to the plaintiff. It may well be that in the particular circumstances—from the details of the narrative itself—it would be quite unreasonable to suppose that the statement could possibly apply to the particular plaintiff.

Briefing of Leaders without Juniors.

THE SUGGESTION that a partner in a prominent firm of solicitors is reported in a daily paper to have made for lowering the cost of litigation, by giving the solicitor the option of briefing a leader alone without a junior, will undoubtedly meet with the strongest opposition from members of the junior Bar. Such a suggestion is tantamount to conferring a benefit on one party entirely at the expense of another. The junior, after all, has to put in a great deal of spade work in advising, drawing pleadings, and otherwise preparing the case for trial, and in many instances the amount of the junior's fees for the interlocutory work is somewhat inadequate, and disproportionate to the work and labour involved. The junior in such cases can only hope to have this inadequacy made up by the receipt of a brief to appear at the trial of the action. If, therefore, any such suggestion as that referred to above were ever carried out, it would be necessary, in order to protect the junior's interests, correspondingly to raise his fees in respect of the interlocutory work. Any such change, however, would not be to the interests of the public, since in the vast majority of cases, actions which are begun are settled before coming to trial. The result, therefore, would be in the long run that, while some saving might be effected in the cost of the hearing of actions which eventually reach the trial stage, litigation as a whole would become more expensive, since the cost of the majority of actions would be heavier than before.

Auctioneers' Commission.

(*Continued from p.* 165.)

II.

In a previous article under the above title (*ante*, p. 165) it was mentioned that an auctioneer does not guarantee the solvency of prospective purchasers. A correspondent then pointed out (*ante*, p. 189) that the prospect of agents being able to earn easy commissions by getting contracts signed by people of no means beyond the payment of the deposit, and confident in the belief that they have done their part, whether the purchaser intends to complete or not, is not very reassuring. Nevertheless, commission may be payable in respect of a person who, although he does not buy the property, has come within the definition of a ready and willing and able purchaser. For the elucidation of this question of fact, guidance may be obtained from the unreported case of *James* v. *Smith*, decided in 1921. The question there was not the willingness, but the ability, of the proposed purchaser, i.e.—whether the person introduced as a purchaser was a person of means. The present Lord Atkin stated: "I think it is sufficient if it is proved by the agent or by the purchaser that the circumstances are such that if the vendor had been willing and ready to carry out the contract he, on his part, at the proper time could have found the necessary money to perform his obligation." The exigencies of business will not permit of an auctioneer requiring proof of means before sending a prospective purchaser to view a house, but if the vendor requires such proof it will in most cases be tendered if the purchaser is anxious to complete. Even if the vendor is not then satisfied, it is possible that on a claim for commission, the judge might hold, on the same evidence, that the auctioneer had discharged the onus of proof.

The above-mentioned dictum is of no assistance in cases where the purchaser, having repudiated the agreement, refuses to give evidence of his means merely to help the auctioneers to recover commission. In such cases, it is submitted that the payment of a deposit is *prima facie* proof of means, and that the onus is then on the defendant, the vendor, to prove the contrary. Relevant matters for consideration would be whether the proposed purchaser (1) was well-dressed; (2) drove up in a car; (3) gave an address at which prospective purchasers of the property in question might be expected to reside; (4) is in the telephone directory; (5) what was his trade or business; and (6) whether he subsequently bought a similar property. Undischarged bankrupts may do all these things, but it is on evidence of this kind that business is conducted, and an auctioneer cannot—with safety to his business—require additional proof of a purchaser's *bona fides*. The profession of an auctioneer does not lend itself to procedure such as that which led to the compulsory registration of domestic servants' registries, viz., the collection of fees from mistresses in return for the names and addresses of maids who were already suited. A panel of men-of-straw, ready to sign binding contracts for the purchase of properties, would be too expensive to maintain, as the deposit to be paid on the signing of the contract almost invariably exceeds the commission to be charged on the abortive sale.

The presumption, therefore, is that anyone who contracts to buy property and pays a deposit is a ready and willing and able purchaser. The auctioneer has then performed the duties for which he was retained, and the cause of action for his commission has arisen. If the transaction then fails to mature, the perpetual legal problem arises: Which of two innocent parties shall suffer for the fault of a third? It may seem hard on the vendor to have to pay the auctioneer for finding someone who did not buy the property, but if it was no fault of the vendor's that the sale was abortive, still less in many cases is it the fault of the auctioneer. It would therefore be harder still on the latter not to reap the reward of his efforts.

There is nothing illogical in styling a person who forfeits his deposit "a ready and willing and able purchaser." There is no distinction in principle between the following cases: One purchaser discovers a fresh drainage system is required, and rather than face this expense he considers it cheaper to extricate himself from the contract by forfeiting his deposit. Another purchaser is advised that there is a defect in the title, and rather than face (*a*) the expense of a vendor and purchaser summons, or (*b*) the risk of taking the property with such title as the vendor can make, he also prefers to cut the loss. A third purchaser may be ready and willing and able to complete—if the court so decides—for months after the date of the contract, until the court finally decides that in view of the state of the title he need not. In an extreme case the vendor may have already paid the auctioneer, in the belief that the court would decide that the purchaser must accept the title. If the auctioneer is entitled to commission in the third case, he is equally entitled in the first two cases, where the repudiation takes place a few days after the signing of the contract. To say that in any of these cases the auctioneer is not entitled to commission would be tantamount to holding that he must not only guarantee the purchaser's solvency, but also the quality of the building and the state of the vendor's title.

Demurrage on Railway Waggons.

The right of the company to charge demurrage on waggons "out of position," i.e., on the rails waiting to enter the siding, was recently considered in the test case of *London Midland and Scottish Railway Co.* v. *Duerden*, at Blackburn County Court. The company's case was that (1) by accepting services in respect of waggons "out of position" the defendant had, by his conduct, agreed to pay a reasonable charge; (2) having secured a consignment to himself of trucks for which a charge was made, the defendant had impliedly contracted to pay the company's just and lawful charges. In other words, the principle of charging siding rents for "out of position" waggons was admissible as being services rendered and accepted. The defendant's case was (1) that he was not liable for the payment of siding rents for waggons in sidings where there were no unloading facilities; (2) that the company kept the waggons out of position to suit its own convenience; (3) that the matter should be decided by an arbitrator appointed by the Board of Trade at the request of either party, and therefore the county court had no jurisdiction. His Honour Judge Bradley found that the defendant had refused to accept the advice notes, and had made no specific agreement to pay this particular siding rent. The learned judge therefore held (1) that the defendant's conduct did not amount to a common law contract to pay, but showed a refusal to recognise the company's claim; (2) that the settlement of the difference between the parties lay with an arbitrator to be appointed by the Board of Trade, and was not a matter to be decided by the court. Judgment was therefore given for the defendant, with costs on Scale C in view of the public importance of the case. Stay of execution was granted with a view to an appeal.

A converse case, in the sense that it was the company which objected to the jurisdiction of the court, was *British Hay Traders Association* v. *London Midland and Scottish Railway Co.*, 1925, 18 Rly. & Can. Tr. Cas. 169. The applicants claimed reductions in the charges for the detention of ordinary waggons (not exceeding 16 tons) which were 3s. per day for the first two days, after the expiration of the free periods for loading and unloading, and thereafter 5s. per day. These had been fixed by the Minister of Transport in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing waggon detention and causing traders to be more diligent in loading and unloading. The respondents

contended (1) that the charges were reasonable, although in 1913 the charge had been 1s. 6d. per day for waggons after the free periods; (2) that the court had no jurisdiction to reverse the policy of the Minister in differentiating between the first two days after free periods and subsequent days. It was held by the Railway Rates Tribunal (the court established under the Railways Act, 1921) that (1) it had jurisdiction to modify the charges; (2) having regard to the value of waggons compared with 1913, the charges for the first two days were not unreasonable, in view of the company's loss of profit from the necessary shunting and occupation of sidings—but the extra charge of 2s. per day after the first two days beyond the free periods was no longer justified and should be discontinued.

Though questions as to sidings arose in the first case above, they are usually considered in claims for sidings rebate, as in *Dixon* v. *London Midland and Scottish Railway Co.*, 1925, 18 Rly. & Can. Tr. Cas. 48. The applicant had a private timber siding half a mile from a station, which station he did not use, and he applied for a reduction of rates on the ground that they were the same as those charged for similar traffic using the station, whereas the company were only entitled to charge for conveyance. The Railway Rates Tribunal held on the facts that the conveyance of the applicant's traffic started from or ended at another siding in the station, so that the company were entitled to charge for services prior or subsequent to the actual conveyance.

Prohibition of Cul-de-sac.

A CASE arising out of a bye-law, framed with the above object, was recently before the Borough Magistrates at Shrewsbury. The Corporation prosecuted a builder and contractor for failing to comply with a borough bye-law between 4th and 16th February, in that, having recently laid out a new street, he had not provided that each end should be open to the full width, which provision was practicable, and that he had continued the offence after notice in writing had been given to him on 4th February. The defendant pleaded not guilty.

The town clerk stated that the defendant had constructed a new road leading from Monkmoor-road in a direct line with King-street, an old thoroughfare repairable by the public. The plans originally deposited showed the new road as a continuation of King-street, but the defendant had failed to remove an intervening hedge. The result was that, although the end houses in King-street and the new road adjoined each other, the obstruction of the hedge meant a walk of 620 yards or a drive of 700 yards if the occupants wished to visit each other.

Counsel for the defendant said the issue was upon whom the expense of making up the new street should fall, after the removal of the hedge. As a separate street it was sufficiently made up, and so laid out that it could be made into a thoroughfare by the highway authority. To make it up to the required standard would cost over £700, which should not be borne by the defendant.

The evidence was that the defendant gave notice on 25th June, 1925, of intention to erect five pairs of houses and a new street near Monkmoor-road, in accordance with the accompanying plans and sections, and that the local authority approved the plans on 1st July 1925, for "constructing five pairs of houses and new street off Monkmoor-road in continuation of King-street." The plans showed, by dotted lines, openings at both ends without obstruction, and on 24th December, 1927, the local authority requested the defendant to remove the hedge, " so as to afford through access from the old portion of King-street *via* the new portion to Monkmoor-road, in accordance with bye-law 10." On 20th January, 1928, the defendant's solicitors wrote that he had no intention of removing the hedge and presenting to the corporation a street which he had made, though he was prepared, if the corporation so desired, to enter into negotiations for making the street over to the corporation.

For the defendant it was argued that the prosecution was out of date, as proceedings must be taken within six months of the completion of the lay-out. Evidence was given that the steam-rolling of the new street was completed in July, 1927.

For the prosecution it was submitted: (1) That the lay-out could not be regarded as complete until notice of completion had been given to the Corporation, and an inspection had been made by the surveyor. In the absence of such notice, it might be that the work was all wrong. (2) As regards the burden of making up the road falling upon the defendant, the liability would rest upon the frontagers whether the hedge were removed or not.

The chairman of the Bench (Mr. E. B. MOSER), said that they accepted the borough surveyor's evidence that the plans and sections clearly indicated the laying out of a new street in continuation of King-street, without obstruction. They found that the defendant had failed to provide that each end of the new street should be open from the ground upwards to the full width of the street, such provision being practicable. The defendant had declined to comply with the provisions of the bye-law, and an offence against it had been proved. This offence was a continuing one, and the proceedings were not barred by lapse of time. A fine of £5 was imposed.

A Conveyancer's Diary.

Land held on Trust for Partners before 1926: Vesting.

It has been suggested that reference ought to have been made in last week's " Diary," on p. 201, to the Partnership Act, 1890, ss. 20, 22, which refer to land held as partnership property. Thus s. 20 appears to confirm the view that partnership land is held in trust for the persons beneficially interested in the land, i.e., the partners. On that footing, it is urged that the vesting provisions of the L.P.A., 1925, are clearly applicable, the partners being beneficially entitled to the land either in undivided shares or jointly without benefit of survivorship.

Now s. 20 (1) enacts that partnership property " must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement." Usually the partnership agreement provides that the partners are to be entitled to the property in certain shares. Such cases would, it seems, fall within Pt. IV of the 1st Sched. to the L.P.A., 1925.

Section 20 (2) of the Partnership Act deals with the devolution of the legal estate or interest in partnership land, but, incidentally, refers to " the persons beneficially interested in the land under this section," thus, apparently, emphasising the partners' beneficial interest in the land under sub-s. (1), rather than the holding of the land for the purposes of the partnership.

There is no difficulty where land was immediately before 1926 held by co-owners, who were partners only as respects the profits made by the use of that land, nor where, with such profits, co-owners had acquired other land to be vested in them as co-owners and used in like manner. In such cases the land itself was held in co-ownership and not as partnership property; see Partnership Act, 1890, s. 20 (3).

It seems eminently desirable that partnership land should, unless this is already the case, be deemed to be vested in the partners upon trust for sale. This would clearly be in accordance with the principles underlying the Partnership Act, 1890, s. 22, which provides that land which has become partnership property is to be treated as personalty.

Meaning of "Trustees of the Settlement" in L.P.A., 1925, 1st Sched., Pt. IV., para. 1 (3): *Re Catchpool*, 72 Sol. J. 11; 1928, W.N. 80.

The principle applied by the Court of Appeal in *Re Ryder and Steadman*, 1927, 2 Ch. 62, has been logically extended in the recent case of *Re Catchpool*, 72 Sol. J., 226; 1928, W.N. 80.

In *Re Catchpool* the entirety of land was immediately before 1926 settled land held, it seems, in undivided shares. E was the sole surviving personal representative of the will creating the settlement. There were no trustees of the settlement for the purposes of the S.L. Acts, 1882 to 1890. The questions raised by the summons were—

(1) Whether the entirety of the land was now vested in E, as S.L.A. trustee under S.L.A., 1925, s. 30 (3), upon the statutory trusts; or

(2) Whether there were no S.L.A. trustees of the settlement within the meaning of L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (3), with the result that the land had become vested in the Public Trustee pending the appointment of trustees in his place within *ib.*, proviso (iv).

Now *Re Ryder & Steadman*, *supra*, decides that the expression "settled land" in para. 1 (3) means "settled land" within the S.L. Acts, 1882-90, with the result that, in order to avoid the difficulties intended to be met by L.P. (Amend.) A., 1926, s. 1, the vesting provisions do not, in a certain type of case, place the parties in quite the same position as if the title had commenced after 1925. It seems obvious that the state of things existing before 1926 should, as far as possible, be so affected by the transitional provisions as to give the same result as the new provisions give as respects post-1925 limitations and dispositions. Thus, if "settled land" in Pt. IV, para. 1 (3), is not given the same meaning as that expression bears in S.L.A., 1925, s. 36, a discrepancy between the results obtained by the same limitations before and after the commencement of the new Acts must arise. Thus, the principle of *Re Ryder & Steadman* obviously ought to be confined to as few cases as possible.

But if, as is decided in *Re Ryder & Steadman*, "settled land" means, in para. 1 (3), pre-1926 "settled land," then the view must be taken that "trustees of the settlement" in the same sub-paragraph must mean persons who were such trustees before 1926. This is what Russell, J., decided in *Re Catchpool*.

Now, personal representatives (having no power of sale and not expressly appointed to be S.L.A. trustees) of a testator who creates a settlement by his will only become S.L.A. trustees under the new law. There were in *Re Catchpool* no trustees for the purposes of the S.L. Acts, 1882-90. Hence the entirety of the land became vested in the Public Trustee pending the appointment of new trustees in place of the Public Trustee. It was suggested that new S.L.A. trustees should be appointed.

How are such trustees to be appointed? The S.L. Acts, 1882-90, have been repealed and there does not seem to be any provision saving the power to appoint trustees for their purposes. Moreover, the land is no longer "settled land" by reason of the trust for sale. Thus, what is required is an appointment in place of the Public Trustee, not a purported appointment of S.L.A. trustees. Hence, "trustees of the settlement" in sub-para. 3 (iv) in effect means "trustees for sale" and not S.L.A. trustees.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

Landlord and Tenant Notebook.

Effect of Non-occupation by Tenant of Premises within Rent Acts.

The question as to the effect of non-occupation by a tenant of premises which are within the Rent Acts was considered by a Divisional Court in *Ebner* v. *Lascelles*, *Times*, 27th inst., the actual point apparently being whether the premises are in such circumstances to be regarded as being, notwithstanding, controlled at any rate, *quâ* the non-occupying tenant.

The facts in *Ebner* v. *Lascelles* were briefly as follows: In 1916 the defendant became the tenant of certain premises consisting of a ground floor and basement, having taken over the residue of a lease expiring on the 25th March, 1918. The lease contained a clause exempting the tenant from liability for loss arising from accidental fire, fair wear and tear, and reasonable use.

On the expiry of this lease the defendant took a further lease for three years, containing a similar clause, and on the expiry of the latter in March, 1921, a further lease was granted to the defendant for three years with an option of a further three years. This third lease, however, did not contain the exemptions clause referred to above, so that its withdrawal would have constituted a transfer of a burden or liability from the landlord to the tenant within s. 2 (3) of the Act of 1920, and consequently, therefore, an increase of rent if the premises were to be regarded as controlled. The defendant, after exercising the option, eventually gave up possession in March, 1927. During the whole period of the tenancy it appeared that the defendant herself had never occupied the premises, but had systematically sublet the ground floor furnished and the basement unfurnished, both portions, however, being vacant before the lease expired.

Disputes arose as to the liability of the defendant for dilapidations, whereupon the point was raised that the premises were controlled, and that the liability of the defendant should be determined according to the earlier leases which continued the exemption clause referred to above, it being contended that the withdrawal of that clause in the subsequent leases amounted to a transfer of a burden within s. 2 (3) of the Rent Act, 1920, and therefore to an illegal increase of rent. It was argued, however, on behalf of the landlord that the Rent Acts did not apply (1) because of the non-occupation of the premises by the defendant, and (2) because part of the premises had been sub-let furnished.

As regards the question of the effect of non-occupation, this is one which has been raised in previous cases, but it was presented in a novel form in *Ebner* v. *Lascelles*. In such previous decisions as *Hicks* v. *Scarsdale Brewery Co.*, 1924, W.N. 189; *Martin Estates* v. *Watt & Hunter*, 1925, N. Ir. L.R. 79; and in *Gidden* v. *Mills*, 1925, 2 K.B. 713, the point for the consideration of the court was whether or not a statutory tenant lost the protection of the Act by ceasing to remain in occupation. In *Ebner* v. *Lascelles*, on the other hand, the tenant had always been a contractual tenant and not a statutory tenant. This point is brought out in the judgment in *Ebner* v. *Lascelles*. Thus after the distinction has been drawn between the two kinds of protection afforded by the Rent Acts, i.e., with regard to holding over after the determination of the contractual tenancy, on the one hand, and with regard to increases of rent, on the other, the judgment of Salter, J., proceeds as follows: "It might well be that if the tenant in this case had denied the plaintiff's right to possession, the plaintiff could have recovered against her on the ground that she was not in occupation herself," but this passage is not, of course, to be read as implying that possession on the above ground could have been obtained while the contractual tenancy was still in force. It seems pertinent to point out, however, that the judgment makes no allusion to the discrepancies between *Gidden* v. *Mills*, on the one hand, and *Hicks* v. *Scarsdale Brewery Co.* and *Martin* v. *Watson*, on the other, nor to the fact that as the result of the former the

question whether a statutory tenant loses the protection of the Acts by non-occupation remains very much in doubt.

These cases at any rate can have no application to a contractual tenancy, and the contention that a contractual tenant loses the protection of the Act by non-occupation cannot, as the Divisional Court decided, be supported in any way. We shall deal with the second point raised in *Ebner* v. *Lascelles* in our next issue.

Our County Court Letter.

ASSAULT AS AN ACCIDENT RISK.

THE latest decision as to whether the above is covered by the Workmen's Compensation Acts, 1925 and 1926, is that of the Court of Appeal in *Lee* v. *S. and J. Breckman and Co., Ltd.*, 165 L.T.J. 123. The respondents were furniture makers, and, having sent for a railway van, they unfortunately kept it waiting. When the furniture was at last ready, the railway man was very annoyed at being asked by one of the respondents' porters to lend a hand with the loading up. A quarrel ensued, during which the railwayman jumped from the van and hit the porter in the face, thus committing an assault for which he was duly convicted. The result was, however, that the porter (Lee) had to have an eye removed, and in due course he applied for compensation in the above case. His Honour Judge Cluer held that though the assault was an accident, it was not a risk of the applicant's employment that he should be exposed to assaults. Assuming that this particular assault was unprovoked, it was not brought about by the applicant doing anything of service to the employer. The learned judge therefore dismissed the application. The Court of Appeal (Lord Hanworth, M.R., Lord Justice Atkin—as he then was—and Lord Justice Lawrence) held that there was ample evidence upon which the county court judge could find as he did—viz., that there was no special risk of assault in the employment. The decision was therefore upheld.

The above case was distinguished on the facts from *Upton* v. *Great Central Railway Co.*, 1924, A.C. 302; 68 SOL. J. 251. Viscount Haldane had there stated that "arising out of" imports some kind of causal relation with the employment, but the kind of causal relation required is "satisfied by cases in which there has been injury by accident arising out of what the workman had to do, merely because of the conditions of his employment—as distinguished from being directly physically caused by it." This had been said, however, in reference to an accident which had happened to a workman through slipping on a railway platform while boarding a train in the course of his employment. He had afterwards died from blood poisoning in the knee.

In *Parker* v. *Federal Steam Navigation Co. Ltd.*, 1926, 95 L.J., K.B. 664, the applicant was wheeling a barrow of hot ashes in a stoke hole, when an African stoker—in pulling his hand back while raking out ashes—caught his hand against the barrow. The African thereupon hit the applicant with his fists, and then took a 10 foot iron slice with which he slashed the applicant across the back. His Honour Judge Ruegg, K.C., held that the accident arose out of the employment, which brought the applicant into contact with a man of wild and untrained nature. He therefore awarded compensation, and the Court of Appeal upheld the decision. Lord Hanworth, M.R. (then Sir E. Pollock) observed that the attack was unprovoked, and that the negro was later imprisoned. Although the case was near the line, there was evidence to support the finding of the learned judge. Lords Justices Atkin and Sargant concurred.

In *Reid* v. *British and Irish Steam Packet Co. Ltd.*, 1921, 65 SOL. J. 326, the applicant was a foreman at the London Docks, and had occasion to give a lawful order to a labourer. The latter, for no apparent reason, violently assaulted the applicant, who practically lost the sight of an eye. The Court of Appeal upheld the award of compensation. Lord Sterndale, M.R., said: "If you put a man in command to exercise supervision and discipline over a lot of men who are described as a rough lot and given to fighting at times, although not often—if ever—in the dock premises, it does not seem to me that it is impossible to draw the inference that there is a possibility, if not a probability, of the man being assaulted." Lord Justice Scrutton and Lord Wrenbury (then Lord Justice Younger) concurred.

The House of Lords in *Trim Joint District School* v. *Kelly*, 1914, 58 SOL. J. 493, laid down the principles governing the above cases.

Practice Notes.

DIVORCE.

In a former note on the subject of the jurisdiction of the Divorce Court to grant relief, it was mentioned that there were several real or apparent exceptions, though infrequently calling for application, to the rule that the domicil of the husband must be English in order to found jurisdiction to grant a decree of dissolution of marriage.

The first exception is where the court is given special jurisdiction by statute or order. The Matrimonial Causes (Dominions Troops) Act, 1919, conferred such a jurisdiction for the space of one year from the passing of the Act. Also non-Moslem British subjects domiciled in Turkey may prosecute their matrimonial suits in England by virtue of the Treaty of Peace (Turkey) Act, 1924, and the Treaty of Peace (Turkey) Order, 1924, Art. 2.

The case of a deserted wife presents another apparent head of exception, the validity of which, in principle, has been, it is submitted, finally deposed in *Lord Advocate* v. *Jaffrey*, 1921, 1 A.C. 146, and *Attorney-General for Alberta* v. *Cook*, 1926, A.C. 444. The proposition has been enunciated by GORELL BARNES, J., in *Armytage* v. *Armytage*, 1898, P. 178, at p. 185: "The court does not now pronounce a decree of dissolution where the parties are not domiciled in this country, except in favour of a wife deserted by her husband, or whose husband has so conducted himself towards her that she is justified in living apart from him, and who, up to the time when she was deserted, or began so to be, was domiciled with her husband in this country, in which case, without necessarily resorting to the American doctrine that in such circumstances a wife may acquire a domicil of her own in the country of the matrimonial home, it is considered that, in order to meet the injustice which might be done by compelling a wife to follow her husband from country to country, he cannot be allowed to assert for the purposes of the suit that he has ceased to be domiciled in this country."

The two recent decisions mentioned above finally established that a married woman can in no circumstances acquire or retain a domicil distinct from her husband: *Armytage* v. *Armytage* was a suit for judicial separation, but the dictum with reference to a deserted wife has been relied on and applied in the cases of wives in similar circumstances seeking dissolution, and it is submitted, will still avail them if the principle underlying it is put as an estoppel of the husband from alleging a change of domicil instead of an exception to the rule.

Further, the rule has been departed from in terms in the cases where a woman originally domiciled in England, having married in England a foreigner domiciled abroad, who afterwards, in the country of his own domicil had obtained a decree of annulment of the marriage, where, notwithstanding, the marriage in England continued to subsist. In *Stathatos* v. *Stathatos*, 1913, P. 46, BARGRAVE DEANE, J., said: "It is undoubtedly giving the go-by to what has always been the

rule of law and practice here, namely, that the wife's domicil is the husband's, whatever that may be . . . "; and Sir SAMUEL EVANS, P., in *De Montaigne* v. *De Montaigne*, 1913, P. 154: "I think it better, where necessary, in a case like this, to make an exception from the ordinary rule that domicil governs these cases and to grant a decree as a practical way of giving [the petitioner] the redress to which she is entitled."

In view, however, of the decisions in *Lord Advocate* v. *Jaffrey* in the House of Lords, and *Cook's Case* in the Privy Council, it is submitted that in future no resulting hardship to the petitioner will prevent the inflexible application of this rule.

Correspondence.

Costs of Counsel.

Sir,—I have to inform you that the President has decided that the costs of counsel attending upon any application in probate and divorce, not made in open court, shall not be allowed upon taxation unless a certificate for counsel has been applied for and obtained. This direction will come into force in respect of attendances on and after 17th April 1928.

C. Y. A. WILKINSON,
Establishment Officer.

Principal Probate Registry,
Somerset House,
London, W.C.2,
16th March.

Discharged Prisoners' Aid Society.

Sir,—In proposing a vote of thanks to Lord Justice Sankey at a public meeting of the Discharged Prisoners' Aid Society, Sir Henry Jackson expressed the view that it was a tremendous asset to have a man with great qualities of head and heart presiding. How true it is, too, that the combination of those two factors equally applies to what is, perhaps, one of the most difficult problems in social work.

Aid societies certified by H.M. Secretary of State, largely run by voluntary effort, are established at every prison and in a number of closed prison areas in England and Wales, assisting over 30,000 persons of all ages and irrespective of creed, annually.

Lord Justice Sankey pointed out that we must not run away with the idea that every man who goes to prison is a criminal. Again, how strictly accurate that is; but the aid societies in all county areas and in London are crippled by lack of support to deal adequately with this problem of national importance.

It costs over £80 per annum to keep a person in prison, and a late prison commissioner once said that the work of aid societies was a national insurance against crime.

I venture to appeal for at least two things—

(*a*) Increased financial support in county and London areas;

(*b*) Offers of employment for suitable discharged prisoners, many of whom are first offenders of the educated and professional classes.

W. W. JEMMETT, F.I.S.A.,
Secretary,
Central Discharged Prisoners Aid Society (Inc.),
26th March, 1928. Victory House, Leicester Square.

Auctioneers' Fees.

Sir,—May I be allowed through your columns to call attention to the revised scale of professional charges recently approved by this Society's council? In the main the scale accords with those approved by the Surveyors' Institution and the Auctioneers' Institute, and thus constitutes another step forward towards the general recognition of standard and equitable charges. Here also it may be properly stated that there is a growing tendency on the part of the courts to take judicial notice of such and similar professional scales, though unlike those of the Law Society, they have not yet been legalised by statute.

While at present it is impossible for the professional societies to deal effectively with "undercutting," it is gradually being recognised by the public that absurdly low charges denote poor service. In their own interests both agents and clients will do well to insist on the adoption of recognised scale charges, as the number of cases before the courts shows how often rates of commission are in dispute with results that can rarely be satisfactory to either party.

JOHN STEVENSON,
General Secretary,
The Incorporated Society of Auctioneers and Landed Property Agents.
26, Finsbury-square, E.C.2,
16th March, 1928.

Auctioneers' Commission.

Sir,—I have read with interest the article in your issue of the 10th inst., and the letter of Mr. E. W. Davies in that of the 17th inst.

In both communications, references were made to the case of *Knight, Frank & Rutley* v. *Gordon and Others*, and these references are of great importance.

Messrs. Knight, Frank & Rutley had introduced a person able to complete, but one who was not ready and willing to do so, intending, apparently, to complete as the result of anticipatory deals which did not materialise.

It was urged on their behalf that the person introduced was of such financial stability that he might be forced to complete by an action for specific performance. Mr. Justice Acton viewed with disfavour the suggestion that the vendors—as between themselves and the plaintiffs as their agents—were under any contractual obligation to take proceedings against the purchaser for specific performance.

This important case established, quite clearly, that an agent, in order to earn his commission, must introduce a person able, *willing* and *ready* to complete the transaction.

Mr. Davies says "One would fain hope that for the honour of their profession the Auctioneers' Institute would draw up model scales and rules so that an innocent vendor might know what treatment to expect if a sale is abortive through no fault of his own." With great respect to Mr. Davies, may I say that there is no need for this hope, the position being so well established in the following decisions of the Court of Appeal, namely: *Lott* v. *Outhwaite*, 1893; *Beningfield* v. *Kynaston*, 1887; *Green* v. *Lucas*, 1875; and *Fisher* v. *Drewett*, 1878.

It would seem to me, as a layman, that the courts have most clearly laid down that the agent is entitled to no remuneration unless and until he has introduced a person able, ready and willing to complete the transaction.

Mr. Davies says further "The prospect of agents being able to earn easy commissions by getting contracts signed by people of no means beyond the payment of the deposit, and confident in their behalf that they have done their part whether the purchaser intends to complete or not, is not very reassuring."

May I refer Mr. Davies to the judgment of the Court of Appeal in *James & Sons* v. *Smith*, 1921? It effectively shows that there is no such prospect as Mr. Davies contemplates. May I go further and assure him that agents in general do not seek to recover remuneration in regard to transactions which they have not in fact effected?

Unfortunately, agents have to do a good deal of work for nothing, but I do not think the inference from the suggestion of Mr. Davies can be fairly laid against them.

Even if this were not so, surely the answer to such a suggestion has been most effectively given by the courts in the cases to which I have referred.

E. H. BLAKE, Secretary,
The Auctioneers' & Estate Agents' Institute.

London, W.C.2.
26th March.

Obituary.

SIR CHARLES RUSSELL.

The Honourable Sir Charles Russell, Bart., K.C.V.O., solicitor, died in a London Hospital, following an operation, on Tuesday last, the 27th inst. Born in 1863, Sir Charles was the second son of Charles Russell, who was appointed Lord Chief Justice of England in 1894 (taking the title Lord Russell of Killowen), and a brother of Mr. Justice Russell. He was educated at Beaumont College, Old Windsor, and in France, served his articles with Sir John Hollams, Sons, Coward & Hawksley, and admitted in 1888, built rapidly up an extensive practice in Norfolk-street, Strand, at first in partnership with a son of Mr. Justice Day. He was frequently consulted in complicated family matters, where his sound judgment and wide knowledge of the world proved invaluable. Ability and thoroughness in his work quickly won him recognition, and at the age of thirty he had the somewhat remarkable honour for one so young of being engaged as solicitor for the British agent in the historical Behring Sea dispute between the United States of America and Great Britain. Probably the first case, however, which brought him prominently to the notice of the public was the prosecution of the late Lord Queensberry by Oscar Wilde for libel two years later. Curiously enough, Sir Charles, in representing the defendant, instructed Mr. (now Lord) Carson, who also first made his name at the English Bar in the same trial.

Sir Charles was appointed solicitor for the Government of the Dominion of Canada in a number of matters concerning their interests in this country, notably the Great Trunk Railway arbitration and the Great Labrador Boundary dispute. Indeed, he afterwards appeared in a long list of causes *célèbre*, and undoubtedly made a great reputation as a lawyer. He was legal adviser to the Stewards of the Jockey Club and of the National Hunt Committee. Perhaps, even to a greater extent than the first Sir George Lewis, and his son, also Sir George Lewis, whose death we recorded recently, he was entrusted with probably more secrets than any other member of his branch of the profession, and was successful with his wide experience of human nature in avoiding legal proceedings in far more "affairs" than those which were brought into court. At one time he essayed to enter Parliament, and unsuccessfully contested Central Hackney in 1895 and South Salford in 1910, in the Liberal interest. He was a director of the Equity and Law Life Assurance Society, a director of the St. John and St. Elizabeth Hospital, chairman of the Catholic Federation, and chairman of the Red Cross Society of the Order of St. John. He was a member of the London County Council during 1910-1913, and his many activities included membership for many years of the Political Committee of the Eighty Club. He was created a Baronet in 1916 and made a Knight Commander of the Royal Victorian Order, and Knight Grace of the Order of the Hospital of John of Jerusalem five years later.

He was a member of The Turf, Beefsteak, and Garrick Clubs, and his principal recreation was golf.

A charming companion, with a wonderful fund of anecdotes and an inexhaustible flow of humour, Sir Charles shone as a conversationalist in any company, and as a teller of stories he was an accomplished artist.

There are many who will mourn the loss and deplore the absence of a wise and intimate counsellor. H.

Reviews.

The History of Contempt of Court, the Form of Trial and the Mode of Punishment. By Sir JOHN C. FOX. Oxford: At the Clarendon Press. 1927. xxiii and 252 pp. 16s. net.

This work contains the results of a careful, painstaking study of a somewhat obscure subject. The author between 1908 and 1924 contributed a series of articles on the subject to the "Law Quarterly Review." In this book those articles have been developed and a considerable amount of new matter, e.g., Chapters VIII and IX, dealing respectively with "Amercement and Fine," and "Almon's Case in the United States," has been added to them.

Sir John Fox, who, of course, until lately was senior Master in the Chancery Division and is a former co-editor of the "Yearly Practice of the Supreme Court," is specially qualified to treat of such a subject as this, and the manner of treatment adds weight and interest to the conclusions reached.

One of the most interesting of these conclusions is that in former times the offence of contempt committed out of court was triable by a jury in the ordinary course of law, and not summarily by the court, as in modern times. Since the eighteenth century it has been generally assumed that the modern practice of proceeding summarily in such cases is founded upon immemorial usage, but it seems reasonably clear from the evidence adduced in this work that in early times criminal contempt committed by a stranger out of court was proceeded against like any other trespass before a jury, and further that such contempt was formerly punishable by imprisonment, from which the offender could obtain his discharge by making fine, but was not directly punishable by a fine in addition to imprisonment.

Another matter of interest brought out by the author is the circumstances in which an elaborate judgment, prepared but never delivered, has acquired a place as the recognised authority on this subject of libelling a judge in his judicial capacity. A rule *nisi* was obtained by the Crown to attach one John Almon for publishing a libel on the Lord Chief Justice, Lord Mansfield; arguments were made and then judgment was reserved. The next term, when the judgments had been prepared, it was discovered that the rule *nisi* had been entitled: "*The King* v. *Wilkes*." One of the judges, Wilmot, J., urged the defendant's counsel "as a gentleman" to consent to an amendment, to which counsel replied that "as a man of honour" he could not! The proceedings were not afterwards proceeded with, but one of the prepared judgments nevertheless became a classic.

Many other examples of interesting as well as instructive conclusions and events will be found in this valuable contribution to the history of English law.

Books Received.

Nitrate Facts and Figures. 1928. Compiled by A. F. BRODIE JAMES, F.S.S. Twenty-fifth year of issue. Fredc. C. Mathieson & Sons, 16, Copthall-avenue, E.C.2.

How to Become a Barrister. Fourth edition. 1928. By GIBSON & WELDON, Law Tutors. Demy 8vo. Paper boards. pp. 53. "Law Notes" Publishing Offices, 25 and 26, Chancery-lane, W.C.2. 4s. 6d. net.

Report of the Fiftieth Annual Meeting of The American Bar Association, held at Buffalo, New York. August-September, 1927. Paper boards. Medium 8vo. pp. 1174 (with Index). The Lord Baltimore Press, Baltimore.

Mental Disorders. A Handbook for Students and Practitioners. Crown 8vo. pp. xv and 448 (with Index of Subjects). HUBERT J. NORMAN, M.B., Ch.B. (Edin.); D.P.H. (Edin. and Glas.); Medical Superintendent Camberwell-house, London. 1928. E. & S. Livingstone, 16 and 17, Teviot-place, Edinburgh. 14s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will—Appointment of "Residuary Legatee"—Whether Operating as Devise of Realty.

Q. 1191. W by his home-made will dated in 1912, after giving sundry pecuniary and specific legacies expressed himself as follows: "My sister X to be my residy legatee." The testator's station in life and spelling and expressions in the will point to the fact that he was not sufficiently well educated to appreciate the technical significance of the word "legatee" as distinguished from "devisee." He was seised of freehold property at the date of the will, and also at the date of his death, which occurred in the year 1926. Please state the effect of the words "my sister X to be my residy legatee." It is urged that in view of the testator's ignorance of technical terms, and the fact that he was seised of freehold property at the date of his will, there is sufficient intimation of his intention to dispose of his property whether real or personal, and that the testator having made an effort in that direction his will should not be so construed as to defeat that object and cause him to die intestate as to real estate. See "Halsbury's Laws of England," Vol. XXVIII, pp. 712 and 713 and "Hayes and Jarman's Forms of Wills," 15th ed., p. 139, and cases therein referred to. We observe further that after the words above quoted the testator empowers his executor to sell any real or personal property, thus emphasising that he had not overlooked real property.

A. Reference to *Hughes* v. *Pritchard*, 1877, 6 C.D. 24, *re Methuen and Blore's Contract*, 1881, 16 C.D. 696, *re Stephen*, W.N. 1913, 220, *re Gibbs*, 1907, 1 Ch. 465, and *re Whitney and Westby*, 1924, 1, I.R. 153, will show that there is plenty of direct authority, but discrimination is difficult. Reference may also be made to *re Salter*, 1881, 44 L.T. 603, and *re Morris*, 1894, 71 L.T. 179. On the materials above, and with the usual caution as to construing a will without seeing it as a whole, the opinion is given that the presumption against intestacy would just carry X through. But neither a purchaser nor the executors could be safely advised to rely on this construction, and, if X and the statutory next-of-kin cannot compromise, an originating summons on the construction appears to be indicated.

Adoption—Order under Adoption Act, 1926—Previous Informal Adoption of Illegitimate Child—Previous Agreement for Maintenance by Mother—Failure to Observe—Procedure.

Q. 1192. A husband and wife are petitioning the judge of a county court for adoption of a child under the Adoption of Children Act, 1926. The child was adopted in August, 1922, by our clients under a verbal arrangement with the mother by which they were to treat the child as their own, and the mother agreed to pay the 10s. per week, being the amout she received from the father of the child, under a paternity agreement. Only about one year's allowance has been paid by the mother to our clients, although she has regularly received the money from the father, and there is now about £115 arrears due to the adopters. The father of the child has stated he is quite willing for our clients to legally adopt the child, but his solicitors have advised him not to sign the form of consent, in case this should have the effect of making him liable for maintenance to the adopters as well as to the mother. Recently the mother's solicitor agreed to our clients legally adopting the child and to assign the benefit of the paternity agreement to them, but later she refused to do this unless she was paid "compensation" for allowing the child to be adopted. We have no doubt that the court will make the adoption order without the consent of both parents, under s. 10 of the Act, but we should like to know what procedure we can adopt to obtain the payment of the future weekly maintenance from the father under the paternity agreement; to be dealt with at the same time as the adoption order is made. We are of the opinion that the father could withhold payment of these sums from the mother, as a breach of agreement on her part to maintain the child, but we cannot get him to move in the matter.

A. The mother appears to have no answer to a claim for the arrears of maintenance under the agreement to keep the child, if sued on the simple contract debt. Some little difficulty might arise in proving the parol agreement, but, even if there is no corroborative evidence, a court is entitled to credit the evidence of a witness deemed truthful, and there would be a *primâ facie* presumption that she should pay for the child, since the adopters could acquire no rights to its custody against her. They have no rights against the putative father in respect of back payments, for he has paid the mother. It is agreed that, in the circumstances above mentioned, a court should have no difficulty in dispensing with the mother's consent under the proviso to s. 2 (3) of the Act (s. 10 hardly appears to be applicable, for, under the agreement the mother was or should have been maintaining the child, and not the proposed adopters). The putative father should be served with the petition as a person liable to contribute to the support of the child within r. 4 (*d*) of the Adoption of Children (County Court) Rules, 1926, but the judge would probably deem his views a very minor factor in the problem before him. Under subs. 5 (1) of s. 9 of the Act it is conceived that the adopters, taking the child as if their own lawful issue, will thereafter have no right of maintenance against either the father or the mother, other than with the sanction of the court under s. 9.

The mother's conduct in taking the father's money for the maintenance of the child and not so applying it need not be discussed here, but will certainly be relevant to the issue whether she has forfeited her right to withhold consent.

Company Liquidator—Preferential Debt—"Clerk" or "Servant."

Q. 1193. A, who is a railway clerk by profession, is also employed in the evenings only by a company (now in voluntary liquidation) as book-keeper, and as the duly appointed secretary He performs these duties personally. A now claims preferential payment of three months' wages under s. 33 (1) (*b*) of the Bankruptcy Act, 1914. Is he entitled to preferential treatment? See *Re Miles, Ex parte Oldham*, 1858, 32 L.T.O.S. 181. Is *Cairney* v. *Back*, L.J. 75, K.B. 1014, sufficient authority to oust this claim, or is there any authority to the contrary?

A. The opinion here given is that A is entitled to priority of payment for his services. As to the decision in *Re Miles*, it is doubtful whether cases decided before the Bankruptcy Act, 1883, are any longer authoritative on such a point. It is submitted that the basis of the decision against the claimant in *Cairney* v. *Back* was that he did not himself render regular personal services so as to bring himself within the category of a clerk or servant, and that that case is no sufficient authority upon which to deny A's claim. Further, it has been decided in *In re G. H. Morison & Co., Ltd.*, 106 L.T. 731, that a man who does not give the whole of his time, but works for definite hours for weekly wages is a servant within the section. Sargant, J., in *Re Ashley and Smith, Limited*, 1918, 2 Ch. 378,

at p. 383, indicates four criteria by which to test employment as a clerk or servant, but none of them, save possibly the circumstance of freedom from control by the master, is said to be conclusive.

Mortgage — Conveyance of Fee by Mortgagor and Mortgagee, the Latter neither Purporting to Surrender or Release Term—Effect.

Q. 1194. A conveyance was executed in 1927 by a mortgagor and his mortgagees, and inadvertently the mortgagees were made to convey "as mortgagees and by the direction of the mortgagor" (instead of surrendering and releasing)—and the habendum was merely: "To hold unto the purchaser in fee simple," without the words "to the intent that the said mortgage term shall merge." It is now suggested that the conveyance was inoperative, and that a confirmatory deed is necessary; but the mortgagor's solicitors contend that by virtue of s. 63 (1) of the L.P.A. ,1925, the estate right, etc., of the conveying parties passed to the purchaser. Your opinion will be appreciated as to what the effect of the conveyance was, and whether any confirmatory deed is necessary.

A. Under s. 63 (1), *supra*, the mortgagees' conveyance operated to pass their estate in the land, which estate since 1925, could only be their term. The opinion is therefore given that the conveyance passed the term, which was, therefore duly merged.

Joint Tenancy and Tenancy in Common—Presumption.

Q. 1195. A and B purchased property in April, 1907, and in the conveyance it is conveyed to them in fee simple without any mention of tenants in common or joint tenants. They purchased other property similarly in 1909, which was mortgaged to a bank. B died in July, 1915, and the vendor's solicitors, although there is no mention in the conveyance, state they submit the property became vested as joint tenants, seeing that no words of limitation were inserted in the conveyance. My contention is that B's personal representatives should join in the conveyance, but if the vendor's solicitors' submission is correct, should not the vendor appoint another trustee?

A. The ordinary presumption was that, in a conveyance to two, they took as joint tenants, in the absence of words indicating a contrary intention. In the absence of notice of severance, therefore, the purchaser can safely, and in fact must, assume that A as survivor was entitled to the whole fee, see amendment to L.P.A., 1925, 1st Sched., Pt. II, para. 3, made by the L.P. (Am.) A., 1926, Sched. The contention of the vendor's solicitors must therefore prevail.

Bastardy — Father's Agreement to pay Maintenance until Child attains Sixteen—Death of Father before Expiration of Time—Liability of Estate.

Q. 1196. In 1925 A, the putative father, entered into a simple contract in writing with B for the payment to her of 6s. a week for sixteen years for the maintenance of her illegitimate child. This contract A faithfully carried out till his death last month.

(1) Can the personal representatives of A be compelled to pay to B the terminable annuity agreed upon or to pay a lump sum in discharge of the agreement?

(2) There were seven weeks' arrears due at A's death. Are the personal representatives of A liable to pay these arrears?

It is recognised that if B had obtained an affiliation order against A she would not have any further claim against the estate of A (Saunders on Affiliation, p. 163), but I can find no definite opinion expressed whether this is also the law where a *contract* has been entered into.

(3) Do you consider that the decision in *James* v. *Morgan*, 78 L.J. (M.C.) 471, would be extended to cover the above facts?

(4) Would the result be the same if the contract above referred to had been under seal?

A. The agreement would no doubt be held to be made, even if not so stated on the face of it, to avoid affiliation proceedings. Liability in respect of an order made in such proceedings absolutely ceases on the father's death, being purely personal, see *Re Harrington*, 1908, 2 Ch. 687. The opinion is therefore here given that liability will also cease under the agreement. And it is to be noted that, if otherwise, the putative father would be saddled with a burden to which even the father of a legitimate child would not be subject.

Pre-1926 Conveyance to Purchaser "In fee" — Equity for Rectification—Effect of the L.P.A., 1925, 1st Sched., Pt. II, para. 3.

Q. 1197. By a conveyance dated in 1923 property was conveyed to A to hold "in fee," the word "simple" being omitted in the deed in error. It can be proved that the words "fee simple" were in the draft. A died in March, 1926, and his personal representatives wish to sell. Did the property vest in A on the 1st January, 1926, in "fee simple" under L.P.A., 1st Sched., Pt. II, s. 2, vesting outstanding legal estates or otherwise under the Act, or is a further assurance necessary?

A. In accordance with *Re Ethel & Mitchell's Contract*, 1901, 1 Ch. 943, A took the legal fee simple for life only under the above conveyance. In the circumstances, however, he had a clear equity against the vendor to have the deed rectified, or alternatively, the vendor held the reversion as bare trustee for him. On this footing para. 3 operated to vest the legal fee in reversion in A. The opinion is also here given that the vendor in 1923 should, on request and at the expense of A's estate, convey the reversion to his personal representatives on the implied covenant for further assurance.

The representatives can sell accordingly, but a condition of sale setting forth the facts and requiring the purchaser either to assume the fee simple was now vested in the executors or to get it in at his own expense might save requisition.

Enfranchised Land — Mortgagee Tenants in Common—Payment off of One—Subsequent Position.

Q. 1198. Prior to 1926 a contributory mortgage of copyhold property was executed to secure £1,000, which sum was advanced by three persons in the proportions of £400, £300 and £300. The person advancing the £400 has recently died, and the sum advanced by him has been repaid by the mortgagors. It may be many years before the further two sums of £300 each are repaid and difficulty may then be experienced in getting the mortgage discharged by his personal representatives. In view of s. 115, sub-s. (1), of the L.P.A., 1925, whereby the receipt mentioned there must be for *all* money secured by the mortgage, it would appear that this receipt is inappropriate under the circumstances, and the personal representatives of the mortgagee, who has been repaid, cannot surrender because they could only surrender an undivided share in the mortgaged property. It is desired to know what is the correct procedure to ensure that when the further two sums of £300 each are repaid the legal estate in the property will re-vest in the mortgagor.

A. The case of mortgagee tenants in common is not specifically dealt with in the new legislation, and, since tenancy in common is abolished, raises a difficulty which has been often raised and discussed in these columns, see, for example, the answers to *QQ.* 134, 327, 350, 509, 588 and 628. On the reasoning given in these answers the mortgagees on 1st January, 1926, took a joint tenancy in a single statutory term to secure £1,000, subject to the equities between themselves. The fact that the land was formerly copyhold would make no difference, see L.P.A., 1922, 12th Sched., para. 1 (*f*), and L.P.A., 1926, 1st Sched., Pt. VII, para. 1. The mortgage term in the entirety is therefore on this footing vested in the surviving mortgagees as joint tenants, and, if and when they are tendered £600, plus interest and costs, they should execute the receipt prescribed by s. 115, *supra*, with the result stated in the section.

NOTES OF CASES.

Court of Appeal.

(Lord Hanworth, M.R., Sargant & Lawrence, L.JJ.)

Crediton Gas Co. *v.* Crediton Urban District Council.

8th and 9th March.

CONTRACT—DURATION—NO POWER TO DETERMINE—IMPLIED RIGHT OF PARTIES TO DETERMINE BY NOTICE.

By the Crediton Gas Act, 1906, a limited company for the supply of gas in Crediton was dissolved, and re-incorporated by the name of the Crediton Gas Company as a body corporate, with perpetual succession and a common seal. By an agreement under seal made on 30th March, 1909, with the Crediton Urban District Council, the company undertook to light all the public lamps in Crediton "from and after the first day of September in every year up to the following first day of May inclusive." Certain rates of payment were agreed upon, which were varied by a supplemental agreement dated 30th June, 1921. Neither agreement contained any provision whether, or how, either party could determine the contract. On 30th April, 1927, the council served a notice on the gas company "to determine their agreement with you for the public lighting of their district on 31st August, 1927." The gas company contended that the agreement could not be terminated by the council without their consent, and brought an action for a declaration to that effect. Russell, J., said that the remarks by James, L.J. in *Llanelly Railway and Dock Company* v. *London and North Western Railway*, L.R. 8 Ch., at p. 949, approved by Lord Selborne in the House of Lords, L.R., 7 H.L., at p. 567, were said to indicate that an agreement of the kind, with no time limit, was perpetual, but the contract here was different; nor could it be said to be permanent mainly because the character of perpetuity attached to both parties. There was an implicaton that either party could determine at notice, and the action must be dismissed. The plaintifls appealed.

Lord HANWORTH, M.R., in the course of his judgment, said that it had been admitted that the defendants could give up using half their lamps if they wished, and the contract was therefore not like the one in the *Llanelly Railway Case*. A recital in the contract referred to an earlier contract which was to remain in force until determined by the council. The contract could not be held to bind the defendants for all time, and the appeal must be dismissed. Sargant, L.J. and Lawrence, L.J., gave judgment to like effect.

COUNSEL: *Grant*, K.C., and *D. D. Robertson*, for appellants; *Spens*, K.C., and *Buckmaster*, for respondents.

SOLICITORS: *R. W. Cooper & Sons; Guscotte, Wadham, Tickell & Co.*, for *John Symes*, Crediton.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Coward, Chance & Co.** Russell, J. 20th January.

COSTS—TAXATION—SOLICITORS' CHARGES—INVESTIGATION OF TITLE—MORTGAGE—FURTHER CHARGE—GENERAL ORDER UNDER SOLICITORS REMUNERATION ACT, 1881, Cl. 2 (*a*), 1st Sched., Pt. 1, r. 10.

Application to vary Taxing Master's certificate.

In 1897 the trustees of the will of Captain Jenner, and Mrs. Jenner, executed a consolidating mortgage to the Commercial Union upon a certain estate and certain shares to secure £111,000. In 1924 and 1926 the Commercial Union made certain further advances to Mrs. Jenner who was the owner in fee upon the same securities. Mrs. Jenner died in 1926, when the amount stood at £75,542. In 1927 Mrs. Jenner's trustees applied to the Commercial Union for an advance of £64,458 upon the securities of the same properties, which was arranged. The old securities were kept on foot for the purpose of preserving priorities and there was a new proviso for redemption, and the solicitors' scale fee was duly delivered for professional charges in connexion with the advance, and the bill was ordered to be taxed, when a dispute arose if it came within Sched. I. The Taxing Master took the view that it was not within Sched. I, and taxed it accordingly. The question was whether the solicitors were entitled to charge on the scale founded by Cl. 2 (*a*) of the General Order, and Sched. I, Pt. I, thereto made in pursuance of the Solicitors Remuneration Act, 1881, or whether the scale should not apply as provided by r. 10 of Sched. I of the Order.

RUSSELL, J., after stating the facts, said: The words to be considered are the words in r. 10: "and it is not to apply to further charges where the title has been so previously investigated." That postulates that if it can not be said that the title has been so previously investigated then that the scale applies to further charges. Here the parties agree that the deed is a further charge, and the question upon which the case really turns is whether there is an investigation of title by the same solicitors within the meaning of the rule. The meaning of the rule is that the title in question is to be the title of the person who is coming forward to borrow the money, and although the same solicitors might down to a previous date have investigated the title to the property in the hands of A, when B although claiming under A came forward to borrow money they had to investigate B's title to the property, and it was impossible to say within r. 10 that B's title had been so previously investigated. In the present case the applicants before they could advise their clients to make the advance had to satisfy themselves that the trustees had power to confer on them a title. For that purpose they had to be satisfied that the lady was dead, what the contents of her will were, and that the trustees had proved the will, and it would not be until they had conducted that investigation of title that they could safely advise their clients to advance the money. I agree with Kay, J., in *ex parte The Mayor of London*, 1887, 34 Ch. D. 452. The result is that the application must be acceded to and the matter referred back to the Taxing Master to be dealt with.

COUNSEL: *Norman Daynes, Nicholson Combe.*

SOLICITORS: *Coward, Chance & Co.; Godden, Holme and Ward.*

[Reported by I. M. MAY, Esq., Barrister-at-Law.]

***Ex parte* The Governors of St. Bartholomew's Hospital.**

Clauson, J. 14th February.

PRACTICE—CHARITY—PETITION FOR PAYMENT OUT—TITLE OF PETITION—FIAT OF ATTORNEY-GENERAL—CHARITIES PROCEDURE ACT, 1812, 52 Geo. 3, c. 101.

This was a petition by the Governors of St. Bartholomew's Hospital (a charitable corporation) for (1) the sanction of the court to a conditional contract by the governors for the purchase of some land for the charity, and for the convenience of the hospital, and arranging as to title; (2) payment out of the funds in court to the credit of the hospital (representing proceeds of sale of lands acquired and purchased from the hospital by the respondents under the Education Act, 1921, and the Metropolitan Paving Act, 1817) of the moneys required by the hospital for the completion of their purchase, and the investment of the balance after payment thereout of certain costs. A question arose in the course of the hearing whether the petition ought to be intituled in the matter of the Charities Procedure Act, 1812 (Sir Samuel Romilly's Act), an Act which was passed to provide a more summary remedy in cases of breaches of charitable trusts and for the just and upright administration of the same. In the case of such a breach or whenever the direction of a court of equity should be deemed necessary for the administration of any such trust the Act enabled any two or more persons to petition the court

provided that before its presentation the petition has been submitted to and allowed by the Attorney-General. It was contended on behalf of the petitioners that the Act was an enabling Act, and reference was made to "Tudor's Charitable Trusts," 4th ed., 387, "Halsbury's Laws of England," vol. 4, p. 335; *In re London, Brighton and South Coast Railway*, 1854, 18 Beav. 608, where the matter was intituled in the matter of the Act, but there were a great many other cases in which similar applications were made where the matter was not intituled in the matter of the Act, such as *The Attorney-General* v. *The Earl of Mansfield*, 1845, 14 Sim. 601; *In re Byron's Charity*, 1883, 23 Ch. D. 171; *In re Bethlehem and Bridewell Hospitals*, 1885, 30 Ch. D. 541; *Ex parte The Vicar of Castle Bytham*, 1895, 1 Ch. 348; *Ex parte Governors of St. Bartholomew's Hospital*, 1875, L.R. 20 Eq. 369.

CLAUSON, J., after stating the facts, said: It is not necessary that the petitions in this case should be intituled in the matter of the Charities Procedure Act, 1812, nor that the fiat of the Attorney-General should be obtained certifying his allowance of the petition before its presentation as provided in the Act.

COUNSEL: *A. H. Droop; Wilfrid Hunt; F. R. Evershed.*

SOLICITORS: *Wilde, Wigston & Sapte; The City Solicitor; T. Bullivant.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Richardson *v.* Abertillery Urban Council. Thomas *v.* Same.

Eve, J. 24th February.

EDUCATION—DISMISSAL OF TEACHERS—NOTICES BY SUB-COMMITTEE—DELEGATION OF POWERS—EDUCATION ACT, 1921, s. 148.

These were two motions by the plaintiffs in these two actions raising questions as to the power of a local education committee to delegate their powers of dismissing teachers to a finance sub-committee. In each case the plaintiff asked for an interlocutory injunction to restrain their employers from terminating their employment. The proposed dismissal was in consequence of the indebtedness of the council and the urgent need for economy. The plaintiffs alleged that the notices served on them were pursuant to a resolution of a sub-finance committee which had no power to serve them. The defendants contended that they had complied with the Education Act, 1921, s. 148, and that the notices were valid.

EVE, J., said that *primâ facie* the plaintiffs were not entitled to ask the court to interfere by injunction. What was asked would, in fact, be granting an injunction as a step to specific performance of a contract of service, which the court never did. It seemed to him that the giving of the notices was well within the powers of the sub-committee. The dismissal of teachers was clearly within the powers of the education authority, and the finance sub-committee was invested with the power of deciding how economy was to be effected. The education committee had statutory powers of delegation under the Act, and it was open to the council to ratify what had been done, and the council had ratified it. There would be no order on the motions.

COUNSEL: *Jenkins*, K.C., and *R. Roxburgh; Maugham*, K.C., *Melville*, K.C., and *Hodge; Upjohn*, K.C., and *A. C. Nesbitt.*

SOLICITORS: *Eric G. Floyd; W. E. Craigen; Church, Adams, Tatham & Co.*, for *Dolman & Co.*, Abertillery.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

In re Catchpool: Harris *v.* Catchpool.

Russell, J. 7th, 8th and 12th March.

SETTLED LAND—"LAND HELD UNDER ONE AND THE SAME SETTLEMENT"—"TRUSTEES (IF ANY) OF THE SETTLEMENT"—OLD OR NEW LAW—LAW OF PROPERTY ACT, 1925, 15 Geo. 5. c. 20, Sched. I, Pt. IV, para. 1, sub-para. (3)—SETTLED LAND ACT, 1925, 15 Geo. 5, c. 18, s. 30 (3).

This was a summons asking whether in the events which had happened and by virtue of para. 1, sub-para. (3) of Pt. IV of the 1st Sched. to the Law of Property Act, 1925, the entirety of the land was now vested in the executrix by representation of the testator upon the statutory trusts as being, under s. 30 (3) of the Settled Land Act, 1925, the trustee of the settlement; or whether there were at the commencement of the Law of Property Act, 1925, no trustees within the meaning of the said sub-paragraph, and by virtue of proviso (i) thereof the entirety of the property, pending the appointment of such trustees, vested in the defendant, the Public Trustee. The facts were as follows: The entirety of the land had been settled in this case under the will of one Thomas Catchpool, who died on 4th May, 1877. The last surviving trustee of the settlement died on 23rd December, 1915, having appointed his wife, a defendant, sole executrix of his will. Immediately before the coming into operation of the Law of Property Act, 1925, the said wife was the sole surviving personal representative of the will of Thomas Catchpool.

RUSSELL, J., after stating the facts, said: It is clear the case falls within para. 1, sub-para. (3) of Pt. IV of the 1st Sched. to the Law of Property Act, 1925. The entirety of the land is settled land held under one and the same settlement, namely, the will of Thomas Catchpool. Under the provisions of the sub-paragraph the land will, on the coming into operation of the Act, vest in the trustees of the settlement (if any), and if none, in the Public Trustee, pending their appointment. The question for decision is whether at the relevant moment there were or were not any trustees of the settlement within the meaning of the sub-paragraph. That depends on whether you are to look for persons who would be trustees of the settlement within the provisions of the old Settled Land Acts (in which case there were none) or for persons who would be trustees of the settlement within the provisions of the Settled Land Act, 1925 (in which case the legal personal representative of the testator is available under s. 30 of the Settled Land Act, 1925). In order to ascertain under sub-para. (2) whether land is not settled or under sub-para. (3) whether it is settled, regard must be had to the law as it was before the commencement of the Act (see *In re Ryder and Steadman's Contract*, 1927, 2 Ch. 62). It follows from that decision that the words in sub-para. (3), "the trustees (if any) of the settlement," mean the persons who were trustees under the old law. The result is that pending the appointment of trustees the land vests in the Public Trustee. Here the Public Trustee has not become entitled to act in the trust, and therefore if trustees of the settlement are appointed the land will vest in them upon the statutory trusts. I accordingly make a declaration in the terms of the second alternative of the summons.

COUNSEL: *Hubert A. Rose; Charles Romer.*

SOLICITORS: *Charles Russell & Co.*, for *Elwes, Turner and Smith*, Colchester.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Societies.

The Law Society.

ADDITIONAL METROPOLITAN STIPENDIARY MAGISTRATES. DEPUTATION TO THE HOME SECRETARY (Sir WM. JOYNSON HICKS) AT THE HOUSE OF COMMONS ON MONDAY, 26TH MARCH, 1928.

The deputation consisted of Sir William Bull, M.P., Mr. Dennis Herbert, M.P., and Mr. J. J. Withers, M.P., with Mr. E. R. Cook, the secretary of the Society.

Sir William Bull stated that complaints had been received by the Society that, owing to the arduous, daily work of the Metropolitan Stipendiary Magistrates, it was found in practice that they could ill spare the time required for completing at one sitting cases of any magnitude. The effect had been

that such cases had been dealt with, to such an extent as to justify complaint, for only a short period at a time, which had necessitated frequent adjournments, resulting in waste of time and money to the public, anxiety to the parties concerned, and, as a matter possibly of lesser though material importance, to the detriment and discredit of the legal profession.

Sir William Bull gave specific instances, which had been submitted to the Council of The Law Society, and he urged that the inconvenience might be met by the appointment of one or two additional magistrates, who might, in any court in which a case was likely to occupy much time, sit to dispose of the ordinary night charges, so as to allow the magistrate regularly attached to the court time to deal with the longer cases.

Mr. Dennis Herbert and Mr. Withers having supplemented Sir William Bull's statement, the Home Secretary expressed himself sympathetically and promised that the matter should receive careful consideration. He pointed out, however, that the question was one in which the Treasury were involved, and that, in the first instance, he would have to consult with the Chancellor of the Exchequer.

The Bar Council.

At the request of the General Council of the Bar, we publish the following resolution :—

" The General Council of the Bar, having considered the speech of Mr. Valetta in the case of *Rust* at the Central Criminal Court on the 1st February, 1928, is of opinion that Mr. Valetta was not guilty of any breach of professional duty in his speech for the defence."

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, the 27th inst. (Chairman, Mr. W. M. Pleadwell), the subject for debate was: " That this House views with alarm the present trend of Anglo-American relations." Mr. R. J. B. Anderson opened in the affirmative and Mr. H. M. Pratt in the negative. The following members also spoke : Messrs. R. D. C. Graham, C. F. S. Spurrell, E. F. Iwi, G. E. Pugh, J. Kenneth Jackson, and Miss Prothero. The opener having replied, the motion was carried by one vote. There were twenty members present.

Equity and Law Life Assurance Society.

The following interesting items are extracted from the statement made at the annual general meeting of the society held on Tuesday, the 27th inst., viz. : The new assurances amounted to £1,671,099 under 587 policies, of which £1,398,091 has been retained by the society ; the gross new premiums amounted to £324,849 ; the amount of total assurances in force at the end of the year was £16,037,594 ; the profit on reversions falling in during the year amounted to £26,592 ; the gross rate of interest earned on the entire funds, excluding reversions, was £5 3s. 9d. ; the corresponding net rate, after deduction of income tax, was £4 6s. 9d. The claims by death under 179 policies, assuring 131 lives, amounted to £466,255 and 220 endowment assurances amounting to £203,040 matured. The total funds amounted at the end of the year to £7,612,638.

United Law Clerks' Society.

ANNUAL MEETING.

There was a good attendance at the annual meeting of this Society, which was held in the West Library of the Law Society's Hall on Thursday, 15th inst.

The chairman of the committee, Mr. Cecil Liney, in presenting the report for 1927, commented on the increasing membership, and remarked that the number of new entrants in 1928 to date was twice as many as in 1927 to this date. The treasurer, Mr. Harry Ellis Stapley, in seconding the adoption of the report, referred to certain financial matters, and also pointed out that ninety members were now in receipt of superannuation benefit. He called attention to the fact that benevolent grants exceeded the income, and that the small balance on that fund was being depleted. Certain questions asked by members present having been duly answered, the motion for the adoption of the report was carried and the committee thanked for their valuable work during the year.

The meeting proceeded to the election of the officers for the ensuing year, after which it considered and passed an amendment of rule allowing further time for the submission of claims to medical benefit.

Copies of the report (an interesting document of 48 pages) may be had on application to the Secretary, at 2 Stone-buildings, Lincoln's Inn, London, W.C.2.

In Parliament.

Questions to Ministers.

LANDLORD AND TENANT ACT.

Sir W. JOYNSON-HICKS (Home Secretary), replying to Mr. E. Brown (L., Leith), who asked whether he had any statement to make as to the date of coming into operation of the Landlord and Tenant Act, said :—

I presume that the Hon. Member is referring to the fact that March 25th—the date on which the Landlord and Tenant Act, 1927, came into operation—was a Sunday, and that tenants whose leases will expire on Lady Day next year and who wished to make a claim under s. 4 of the Act, or to serve a notice under s. 5, were obliged to make their claim or serve their notice on Sunday.

Section 23 of the Act provides that instruments under the Act may be served in one of three ways—by personal service, by leaving the instrument at the last known place of abode of the landlord or his agent, or by sending the instrument by registered post. I am advised that of these three methods the first two would constitute good service, even though service was made on a Sunday. As regards the last, the question is not altogether free from doubt, and if it appears that tenants have been damnified in this respect I am prepared to consider the matter further. (Hear, hear.)

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of The Right Hon. Sir DOUGLAS MCGAREL HOGG, K.C., M.P., to be Lord Chancellor in succession to The Right Hon. Viscount Cave, G.C.M.G., who has resigned his office on account of ill-health, and upon whom His Majesty has been pleased to approve that the dignity of an Earldom be conferred.

His Majesty has also been pleased to approve that Sir THOMAS INSKIP, C.B.E., K.C., M.P., be appointed Attorney-General vice Sir Douglas Hogg, and that Mr. FRANK BOYD MERRIMAN, O.B.E., K.C., M.P., be appointed Solicitor-General vice Sir Thomas Inskip.

Consequent upon the above appointments the King has been pleased to approve that the dignity of a Barony of the United Kingdom be conferred upon The Right Hon. Sir DOUGLAS HOGG, and that the honour of Knighthood be conferred upon Mr. FRANK MERRIMAN.

Resignations, etc.

Mr. J. E. ALCOCK, solicitor, who has held the position of Clerk to the Mansfield Woodhouse Urban District from 1901 to 1921, and who has acted as Solicitor to the Council since that time, has resigned. Mr. Alcock was admitted in 1883.

Mr. ALFRED LEAMINGTON, Assistant Town Clerk of Leamington, after thirty-eight years' service, will retire in June, when he will have completed thirty-eight years' service.

Mr. SMITH TERRY, Solicitor, Town Clerk of Keighley, has tendered his resignation owing to ill-health. Mr. Terry, who was admitted in 1912, has held the appointment for fifteen years, and has been absent from duty for some time.

Wills and Bequests.

Mr. Thomas Foley Bache, solicitor, of Churchill House, West Bromwich, and of Stakenbridge, Kidderminster, left estate of the gross value of £39,328.

Mr. Albert Bedford, of Gainsborough-road, Sheffield, High Bailiff of Sheffield County Court, left estate of the gross value of £5,548.

Mr. Herbert Sharpley, solicitor, of Eastnor, The Park, Mablethorpe, Lincs, Coroner for Louth since 1902, a former Mayor of Louth, left estate of the gross value of £9,940.

SALARIED CHAIRMEN OF QUARTER SESSIONS.

The Unopposed Bills Committee of the House of Lords have passed for third reading a Bill promoted to enable the County Magistrates of Lancashire to appoint barristers as Chairmen of Quarter Sessions held at Manchester, Preston, Liverpool, and Lancaster, and dealing with the salaries to be attached to such posts. In the case of Manchester and Preston this scheme will operate with the passing of the Act, and in regard to Lancaster and Liverpool on such date as the magistrates themselves determine.

THE COUNTY COURT (LANDLORD AND TENANT) RULES, 1928.

CORRIGENDUM.

In the heading to Form 469 (72 Sol. J., p. 209), the words "to enforce a claim under Sections 1, 4, 5 and 8" should be deleted.

Lord Chancellor's Office,
House of Lords, S.W.1.
21st March.

CONTROLLER AND CUSTODIAN OF ENEMY PROPERTY IN CHINA.

The Board of Trade have appointed Mr. J. B. Knight, who is Controller of the Clearing Office with Germany, and Administrator of German, Austrian, Bulgarian and Hungarian Property, to be also Controller and Custodian of Enemy Property in China, with effect from 1st April.

The office in Shanghai of the Controller and Custodian of Enemy Property in China will be closed on 31st March, and thereafter communications should be addressed to Cornwall House, Stamford Street, London, S.E.1.

RIGHT TO ALIMONY.

A ruling establishing an important precedent in matrimonial law was given in the Divorce Court by the President (Lord Merrivale) on the 26th inst. The matter to be decided was whether a wife, who agreed in a deed of separation not to sue her husband for maintenance in the event of subsequent legal proceedings, was entitled to alimony when she obtained a divorce.

Lord Merrivale ruled that the woman entered into the contract with the status of a wife, and as this status ceased to exist after a divorce she was entitled to sue for maintenance.

The husband was given leave to appeal.

ANGLO-GERMAN MIXED ARBITRAL TRIBUNAL.

COMPLIMENTARY DINNER TO MR. VAUGHAN WILLIAMS, K.C.

Mr. R. E. L. Vaughan Williams, K.C., was entertained to dinner at the Connaught Rooms, on Wednesday, the 21st inst., by his colleagues and others closely associated with the Anglo-German Mixed Arbitral Tribunal, on the conclusion of his work as one of the British members of the Tribunal. Dr. Sandström, the President of the Third Division, occupied the chair and, in proposing the toast of "The Guest," paid a tribute to the work Mr. Vaughan Williams had done in framing the rules governing the procedure of the Tribunal, which, he said, was no easy task in view of its peculiar nature. He also referred to the part Mr. Vaughan Williams had taken in the creation of the jurisprudence of this International Court. The Tribunal was in the nature of an experiment and had depended for its success, not only upon the legal attainments of its members, but also upon their loyal and cordial co-operation, and in this respect no one more fitting could have been selected by the British Government than Mr. Vaughan Williams.

Mr. Charles Herbert Fox Barrett (sixty-eight) of Ellangowan, Cecil Park, Pinner, Middlesex, for twenty-five years Town Clerk of St. Pancras, left estate of the gross value of £3,626.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday, Apl. 2	Mr. Hicks Beach	Mr. Ritchie	*Mr. Hicks Beach	Mr. More
Tuesday ... 3	Synge	Bloxam	Bloxam	Hicks Beach
Wednesday . 4	More	Jolly	*More	Bloxam
Thursday .. 5	Ritchie	Hicks Beach	Hicks Beach	More
Date.	**Mr. Justice Romer.**	**Mr. Justice Astbury.**	**Mr. Justice Tomlin.**	**Mr. Justice Clauson.**
Monday Apl. 2	Mr. Bloxam	Mr. Ritchie	Mr. Synge	Mr. Jolly
Tuesday ... 3	*More	*Synge	*Jolly	Ritchie
Wednesday . 4	*Hicks Beach	Jolly	*Ritchie	Synge
Thursday .. 5	Bloxam	Ritchie	Synge	Jolly

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION *will commence on Friday, the 6th day of April, 1928, and erminate on Tuesday, the 10th day of April, 1928, inclusive.*

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 12th April, 1928.

	Middle Price 28th Mar.	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86¾	4	12	6	—		
Consols 2½%	55½	4	14	0	—		
War Loan 5% 1929-47	102¼	4	18	0	4	18	9
War Loan 4½% 1925-45	97½	4	12	6	4	16	6
War Loan 4% (Tax free) 1929-42	100	4	0	0	4	0	0
Funding 4% Loan 1960-1990	86¼xd	4	11	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¼	4	6	0	4	7	0
Conversion 4½% Loan 1940-44	97½	4	12	0	4	16	0
Conversion 3½% Loan 1961	76¾	4	11	6	—		
Local Loans 3% Stock 1921 or after	64½	4	13	0	—		
Bank Stock	255xd	4	13	6	—		
India 4½% 1950-55	94	4	15	6	5	0	0
India 3½%	70½	4	19	0	—		
India 3%	60¼	4	19	0	—		
Sudan 4½% 1939-73	95	4	15	0	4	17	0
Sudan 4% 1974	84	4	15	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	85	3	13	0	4	6	0
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	99	5	1	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	93	4	16	0	4	18	6
Natal 4% 1937	93	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	99	5	1	0	5	3	0
New Zealand 4½% 1945	96	4	13	0	4	17	6
New Zealand 5% 1946	103	4	17	0	4	16	6
Queensland 5% 1940-60	97	5	3	0	5	3	0
South Africa 5% 1945-75	103	4	17	6	5	0	0
South Australia 5% 1945-75	97½	5	2	6	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	6	—		
Birmingham 5% 1946–56	102	4	18	0	4	17	0
Cardiff 5% 1945–65	101¼	4	19	0	4	18	0
Croydon 3% 1940–60	70	4	5	6	5	0	0
Hull 3½% 1925–55	78	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	74	4	14	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4	13	6	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4	12	6	—		
Manchester 3% on or after 1941	64	4	13	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	64	4	13	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	65½	4	12	6	4	15	6
Middlesex C. C. 3½% 1927–47	83	4	5	6	4	17	0
Newcastle 3½% Irredeemable	72	4	17	0	—		
Nottingham 3% Irredeemable	64	4	15	6	—		
Stockton 5% 1946–66	102	4	18	0	4	19	0
Wolverhampton 5% 1946–56	101	4	19	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82	4	17	6	—		
Gt. Western Rly. 5% Rent Charge	100	5	0	0	—		
Gt. Western Rly. 5% Preference	97	5	3	0	—		
L. & N. E. Rly. 4% Debenture	78½	5	2	0	—		
L. & N. E. Rly. 4% Guaranteed	74	5	8	0	—		
L. & N. E. Rly 4% 1st Preference	67	5	18	0	—		
L. Mid. & Scot. Rly. 4% Debenture	81	4	19	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	78	5	2	0	—		
L. Mid. & Scot. Rly. 4% Preference	74	5	8	0	—		
Southern Railway 4% Debenture	80½	5	0	0	—		
Southern Railway 5% Guaranteed	98	5	2	0	—		
Southern Railway 5% Preference	93	5	7	6	—		

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Plans and particulars (when ready) may be obtained from the Solicitors, Messrs. WESTERN & SONS, 35, Essex-street, Strand, W.C.2; or of the Auctioneers, ALFRED SAVILL & SONS, at their Head Office, 51A, Lincoln's Inn-fields, W.C.2. (Telephone, Holborn 4913.)

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"WINNING POWER."

A recent Advertisement of a Digest contains the following from a "Subscriber":

"When the case was fought I relied entirely upon this decision (*Sumpter* v. *Hedges*), which apparently was not known by either the County Court Judge or the Counsel who appeared for the Plaintiff, and as a result managed to win a case for my client which I should not have advised him to fight if I had not found the decision I have mentioned.

"As I had looked in various well-known text-books without finding any reference to this case, and as I found it almost at once in "The English and Empire Digest," I consider my experience speaks for itself as to the utility of the Digest."

What are the Facts?

This case, *Sumpter* v. *Hedges*, is found in all leading Text Books on Contracts, such as Chitty, Leake, Pollock, Salmond, Hudson, Emden, and at least 14 other Text Books.

Into what "well-known" Text Books did the "subscriber" look?

This case is also to be found in the NEW EDITION of

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